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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,123	10/19/2006	Boydan Joseph Mudryk	SPRU-03	5935
26875 7590 08/20/2007 WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER ADDIE, RAYMOND W	
			ART UNIT 3671	PAPER NUMBER
			MAIL DATE 08/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/561,123

Applicant(s)

MUDRYK ET AL.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 19 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

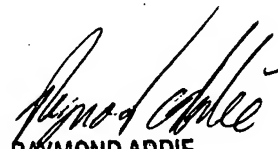
- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/15/05; 10/17/06.

- 4) ☐ Interview Summary (PTO-413)

Paper No(s)/Mail Date. \_\_\_\_\_

- 5) ☐ Notice of Informal Patent Application

- 6) ☐ Other: \_\_\_\_\_

  
RAYMOND ADDIE  
PRIMARY EXAMINER

***Priority***

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Australia on 6/10/04 and 06/23/2003. It is noted, however, that applicant has not filed a certified copy of either the PCT/AU04/2004 nor the Australian application # 2003903188 as required by 35 U.S.C. 119(b).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7, 9, 13, 17, 24 rejected under 35 U.S.C. 102(b) as being anticipated by Kennedy # 6,375,385 B1.

Kennedy discloses a roadside post comprising:

An elongate body (10) of spring steel, having a longitudinal axis, front and rear faces, and an arcuate transverse cross section.

Said body being elastically bendable through 90 degrees from an unbent state, about a transverse axis. See Figs. 2, 3; col. 5, lns. 5-41.

The body has a channel shaped transverse cross section, comprising a central web portion and two lateral flange portions. See Fig. 1. And a base section adapted to be driven into the ground. See Fig. 2.

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Although Kennedy does not explicitly recite the step of driving the post into the ground, it is inherent the laminated steel post, can be driven into the ground to support a road sign or the like.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-4, 8, 10, 18-21, 25-28 are rejected under 35 U.S.C. 102(b) as

anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over

Kennedy # 6,375,385 B1.

Kennedy discloses all that is claimed, with respect to claim 1, to include

"This normal curvature formed in the elements 12 provides a straightening force for the elements and the support 10 formed therefrom, with the resilience of the spring steel or other suitable material urging support 10 back to its normally straight condition after bending".

Therefore it would be obvious, if not inherent, that the post of Kennedy would

bend elastically through 90 degrees from either side of the longitudinal axis, and

clearly contemplates known forms of spring steel, including high carbon steel,

and C40 steel. See Col. 8, Ins. 25-33.

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With respect to claims 8, 10 although Kennedy does not explicitly disclose the angle or radius of curvature of the post (10). The post is clearly illustrated in Figs. 3-5. Therefore, it would have been obvious, if not inherent the spring steel post of Kennedy could be formed to have a curvature of between 150-175 degrees. In order to increase the stiffness of the post and increase the ability of the post to return to its normal position, once the impacting vehicle or force is removed. See Col. 8, Ins. 25-33.

With respect to claims 18-21, 25-28 although Kennedy does not explicitly disclose forming a "recess" that "extends 50mm-150mm from the post" or extends 50-150 mm below the surface of the ground; for the intended use to "allow uninhibited bending of said body" of the post, it would be well within the skill of one in the art, to dig a hole in the ground to facilitate driving the post into the ground. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide a hole in the ground for receiving the post of Kennedy, in order to facilitate driving the post into the ground.

4. Claims 5, 6, 11, 12, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy # 6,375,385 B1 in view of Blau # 4,486,117.

Kennedy discloses essentially all that is claimed, with respect to claim 1 above, to include:

"Each of the elements 12 is preferably formed of a resilient spring steel, although other materials may be used as desired, with the thickness and width of each blade or element being adjusted accordingly".

Further, Blau teaches it is known that spring steel roadway sign posts have a width of 3" to 4". Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to modify the roadside post of Kennedy to have a thickness of at least 1mm, as reasonably suggested by Kennedy and a width of 3-4", as taught by Blau, in order to provide sufficient structural support for a road sign, or the like, as suggested by Kennedy. See Blau, Col. 3, Ins. 47-50.

With respect to claims 11, 12 Kennedy discloses essentially all that is claimed, with respect to claim 1 above, but does not disclose the use of a base for driving the road sign into the ground. However, Blau teaches it is known to provide road signs with a base (11), having a tapered end (12), for penetrating the ground, and an upper end fixed to the body of the post (13). The lower end of post (13) being tapered to accommodate being fixed to the base (11). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the road sign of Kennedy, with a tapered lower end and a ground penetrating base, as taught by Blau, in order to facilitate driving the road sign into the ground, adjacent the roadway. See Blau Fig. 3, Col. 2, Ins. 21-33.

5. Claims 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy # 6,375,385 B1 in view of Blau # 4,486,117, as put forth with respect to claim 11 and further in view of Strick # US 2005/0196235 A1.

Kennedy in view of Blau discloses essentially all that is claimed, with respect to claim 11 above, but does not explicitly recite driving the base completely underground. However, Strick teaches it is known that "By disposing the anchor a depth D beneath the surface (25), the tubular body will bend or flex primarily about a point P on the surface of the roadway (in the case where a force is applied to a frontal face 14)...In this manner, rather than bending the body (12) about an inside edge of the anchor...the tube is bent or flexed against the roadway, which may be softer and less likely to initiate shear of the tube...The step of installing the anchor...includes the step of installing the anchor at least about  $\frac{1}{2}$  inch below the surface of the roadway".

Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to drive the anchor assembly of Kennedy in view of Blau, at least  $\frac{1}{2}$ " below the road surface, as taught by Strick, in order to reduce damage to the post. See Strick paragraph [0041].

6. Claims 15, 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy # 6,375,385 B1 in view of Conway et al. # 5,957,425.

Kennedy discloses essentially all that is claimed, with respect to claim 1 above,

but does not disclose to include providing a plurality of holes (22) spaced apart, along the length of the post (10). However, Conway et al. teaches it is known to provide a plurality of holes (21), spaced apart one inch on center, in a road sign support post. At least one of the holes (21) being indicative of the location of the surface of the ground when said post is driven into the ground to a design depth. See Fig. 8A. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to use the holes in the post of Kennedy, as an indication of the location of the surface of the ground when said post is driven into the ground to a design depth; as reasonably suggested by Conway et al., in order to position the road sign at a desired height above the ground. See Conway Col. 6, Ins. 11-17.

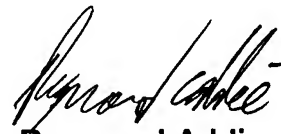
### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 571 272-6986. The examiner can normally be reached on 7am-2:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**Raymond Addie**  
**Primary Examiner**  
**Group 3600**

8/13/07